IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 2032 of 1997

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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NARENDRASINH M CHAUHAN & 3 - Petitioner(s)
Versus
STATE OF GUJARAT & 1 - Respondent(s)

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Appearance :
MR NK MAJMUDAR for Petitioner(s) : 1 - 4.
MR MAULIK NANAVATI, AGP for Respondent(s) : 1,
MR RA MISHRA for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 16/11/2006

ORAL JUDGMENT

1. By way of this petition under Article 226 of the Constitution of India, the respective petitioners have prayed for an appropriate writ,

direction and/or order directing the respondents to give the benefit of higher pay scale to the petitioners from the date they completed 9 years Panchayat service.

2. It is the contention on behalf of the petitioners that inspite of the representation (Annexure – B to the petition), the respondents are denied to give benefit of higher pay scale.

3. Shri B.C.Rupera, learned advocate appearing for the respondent No.2 has pointed out that as such, no representation was even made by the petitioners and the representation, which is relied upon is of one Shri Sureshbhai R. Makwana, who is not the petitioner. He has also further submitted that the alleged decision denying to give the benefit of higher pay scale is also not on record. It is submitted that unless any application is made by the petitioners and there is denial, the writ of mandamus is not maintainable.

4. It is required to be noted that by order dated 1.4.1997 by way of ad-interim relief, it was directed that in the event the petitioners make representation for grant of higher pay scale to either of the respondents, the same shall be considered in accordance with law and the decision thereof be communicated to the petitioners.

5. Shri Suthar, learned advocate appearing for the petitioners has submitted that he has no instructions in the matter from the petitioners as to whether any such representation was made or any decision on such representation was taken. Be that as it may, the facts remains that before filing the present Special Civil Application, there is no demand by the petitioners and there is no denial by the respondents.

6. Under the circumstances and considering the ad-interim order dated 1.4.1997, the petitioners may make an appropriate representation to the concerned respondent for the benefit of higher pay scale as requested in the present Special Civil Application and as and when such an application/representation is made, the same shall be considered by the concerned respondent in accordance with law and on merits within a period of 3 months from the date of receipt of such representation/application and the outcome of the same be communicated to the petitioners. It is, however, made clear that this Court has not expressed any opinion on the merits of the case and it is ultimately for the concerned respondent to take an appropriate decision in accordance with law and on merits. It goes without saying that if any adverse decision is taken, it will always open for the petitioners

to challenge the same before the appropriate forum.

7. With these, the present Special Civil Application is disposed of. Rule is discharged. Ad-interim relief stands vacated forthwith. No costs.

[M.R.SHAH, J.]

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